AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES
601 Madison St. ■ Suite 400 ■ Alexandria, VA 22314 ■ 703/824/0500 ■ Fax 703/820/1395 ■ Internet Address http://www.airportnet.org

November 8, 2004

Federal Aviation Administration
Airports Financial Assistance Division
APP-500
Attn: Mr. Kendell Ball
Room 619
800 Independence Avenue, S.W.
Washington, D.C. 20591

RE: Docket Number FAA-2004-18925: Notice of Modification of Airport Improvement Program grant assurances and of the opportunity to comment

Dear Mr. Ball:

On behalf of the American Association of Airport Executives ("AAAE"), I am submitting comments to the Federal Aviation Administration's ("FAA") August 24, 2004 Notice of Modification of Airport Improvement Program grant assurances. "Airport Improvement Program Grant Assurances; Proposed Modifications and Opportunity To Comment," 69 *Federal Register* 52057 (August 24, 2004).

AAAE, founded in 1928, is the largest professional organization for airport executives in the world, representing thousands of airport management personnel at public-use airports of all sizes. On behalf of our membership, we appreciate the opportunity that the FAA has afforded the airports community in reviewing the FAA's proposal on grant assurances.

In testimony before the House Aviation Subcommittee on April 1, 2004, AAAE and Airports Council International- North America ("ACI-NA") testified on the need for a thorough review of the many grant assurances. Airports strongly support the goals of the grant assurances, namely to ensure that Federal funds are effectively used to meet the needs of the public for air transportation and for the government to promote other social objectives. However, as we noted in our testimony, we questioned whether all of the grant assurances met those stated objectives. We appreciate the FAA's initiative in understanding the concerns expressed by airports in our April 1, 2004 testimony. As the FAA noted in its August 24, 2004 notice, that "most assurances, if the need for deletion

or change is justified, will require statutory change. FAA may use the public comments to justify future requests by the agency for statutory changes." 64 Fed. Reg. at 52057. AAAE will continue to urge the FAA and the Department of Transportation ("DOT") to continue its review of these grant assurances and are willing to work with the agencies in seeking the appropriate legislative changes to the grant assurances.

At the outset, AAAE supports the FAA's proposal to restructure the grant assurance requirements into three categories: assurances, certifications to be included with an airport's application for AIP funds; and grant conditions. We believe that this reclassification recognizes that some portions of current assurances relate to temporary requirements, which expire on completion of a project. The restructuring of the grant assurances will result in a more accurate reflection of the obligations imposed solely through grant assurances. We note that the FAA, in proposing to convert some grant assurances to certifications or grant conditions, the August 24, 2004 notice does not provide the specific language of these certifications or grant assurances. AAAE respectfully requests that airports have the opportunity to review the language of these certifications and grant conditions prior to their adoption.

Our specific comments on the proposed modifications to the grants assurances follow:

Proposed Grant Assurance C-9, Airport Revenue Use: Airports support the statutory and FAA's policy on airport revenue use which seeks to prohibit the diversion of airport revenues for non-aviation purposes. 49 U.S.C §47107(b) and 49 U.S.C. § 47133. However, we urge the FAA and the DOT to reconsider the revenue use policy as it currently restricts the ability of airports to offer incentives to air carriers to begin service to a particular community. While the incentive is for an aviation purpose, the revenue does not go directly either to the capital program or the operation of the airports despite the fact that the new routes could offer competitive service to either existing carriers or to nearby airports. Thus, the FAA has concluded that such incentives violate the revenue use policy, and would be in violation of the proposed grant assurance. *See*, Policy and Procedures Concerning the Use of Airport Revenue: Petition of the Sarasota-Manatee Airport Authority to Allow Use of Airport Revenue for Direct Subsidy of Air Carrier Operations, 69 Fed. Reg. 61544 (October 19, 2004).

Airport sponsors that are general-use municipalities may use funds from non-airport sources to provide direct subsidies to air carriers. However, airport sponsors governed by a special-purpose authority cannot provide direct subsidies to air carriers because all of the funds generated by the organization are considered airport revenue subject to the revenue use policy and its prohibitions. We believe that this places those airports at a competitive disadvantage. We believe that all airports should have the option of using direct subsidies to carriers in an effort to enhance air service. Airports should be limited only by the requirement for non-discrimination; any promotional or marketing arrangement offered to one carrier should be available to others willing and able to expand or start air service. *See,* Comments of ACI-NA and AAAE, *Petition of Sarasota-Manatee Airport Authority to Allow Use of Airport Revenue for Direct Subsidy of Air*

Carrier Operations, Docket No. FAA-2003-16277, 68 Federal Register 62651 (November 5, 2003).

In the current economic climate of reduced operations by many U.S. airlines, airports, particularly small and mid-sized airports, need to be able to use all available marketing tools to attract new service. We note that the Congress, in creating the Small Community Air Service Development Program, permits airports to use Federal funds to directly subsidize air service. There is at a minimum, an inconsistency in FAA and DOT policies and programs that we believe should be corrected to reflect the current economic climate faced by both airlines and airports.

Proposed Grant Assurance C-18: Competitive Access: Like the grant assurance on revenue use, the proposed grant assurance C-18 on competitive access is also rooted in statute. Section 155 of the Wendell H. Ford Aviation Investment and Reform Act of the 21st Century (Pub. L. 106-181) requires the submission of a competition plan by certain large and medium hub airports for a new AIP grant or Passenger Facility Charge collection.

In our April 1, 2004 testimony, both AAAE and ACI-NA cited strong opposition to the requirements of this provision. We urged not only the Congress but the DOT to review the competition plan requirements. We note that in September 2004, the FAA issued a program guidance letter, revising some of the requirements of the competition plan submissions. *See,* Program Guidance Letter 04-08 (September 30, 2004). We deeply appreciate the initiative taken by the DOT and the FAA to review the competition plan criteria and to develop some streamlined initiatives to ease the regulatory burden for airports. However, we continue to call for the elimination of this requirement and urge the FAA to consider this requirement and the associate grant assurance as one for elimination when the FAA considers its legislative recommendations to the Congress.

Airports support competition at their facilities. Airports spend a significant amount of time, energy, and resources to convince carriers to provide air service to their communities at the lowest fares possible. We simply reiterate, as we did in our April 1, 2004 testimony, that the DOT and the FAA have the authority to investigate any matters at an airport that they may consider to be non-competitive without the need for any airport to submit a competition plan.

Rates and Charges: We note that proposed grant assurance C-6, Economic Nondiscrimination, deals with the requirements of airports to charge reasonable and non-discriminatory rates and charges to aeronautical users of the airport. At the heart of this grant assurance is the rates and charges policy.

Airports must comply with a detailed rates and charges policy that includes 68 separate subsections, not including the 12 that the D.C. Circuit Court vacated in 1997 and which have yet to be rewritten and promulgated by the DOT. Airports believe that rates and charges should be fundamentally deregulated, except for those provisions that protect against the diversion of airport revenue and assurances against unjust discrimination.

Airports, like other organization that manage infrastructure and offer their facilities at a price to users, are in the best position to set pricing regimes in order to pay for the costs of establishing and maintaining their facilities. And because all revenues are kept "on the airport," all the incentives go toward fair pricing for the use of facilities and services.

Such de-regulation would, for example, help airports construct new gates in anticipation of new entrant or low-fare carriers wanting to provide service at their facility; under the present policy, airports cannot use their revenues to build new terminal facilities and gates in anticipation of new air service. Since the industry declines that began in 2001, some airports may have sufficient gate capacity to accommodate new entrant carriers. However, the number of passengers using the aviation system is, once again, increasing, with the FAA forecasts predicting 1 billion passengers by 2014. As enplanements continue to rise, and aircraft operations continue to increase, airports need the option to build more gates to accommodate the demand.

Disposal of land, C-15: Proposed assurance C-15 could require an airport with shrinking noise contours to sell land that was originally acquired for noise compatibility purposes, even though future growth could cause those noise contours to expand in the future. Shrinking noise contours do not obviate the usefulness of such land in contributing to noise compatibility. In order to eliminate this problem, and to give a sponsor more flexibility regarding appropriate land use, AAAE suggests that the first sentence of this assurance be revised as follows: "For land purchased under a grant for airport noise compatibility purposes, at the earliest practical time after the sponsor has determined that is unlikely that the land will be needed for such purposes, it will identify an appropriate alternative to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land."

In addition to the grant assurances, included with each grant awarded under the AIP program are the "Terms and Conditions of Accepting Airport Improvement Program Grants." As the FAA considers changes to the grant assurances, we recommend that the FAA also revise these terms and conditions and offer the following specific comments:

Article II, Certifications, A.3: provides "An independent cost analysis will be performed, an a record of negotiations will be prepared reflecting the considerations involved in the establishment of fees for all engineering contracts with basic service fees exceeding $100,000." In today's environment, a threshold of $100,000 is rather low to warrant an independent cost analysis. Consideration should be given to indexing this threshold and have $250,000 as a minimum threshold.

Article II, Certifications, A. 10: provides "If services being procured cover more than a single grant project the scope of work will be specifically described in the advertisement and, future work will not be initiated beyond five years." This statement needs further clarification to delineate if the future work statement precludes any additional work by that contractor or the work being addressed in the original project to ensure timely completion.

Article II, Certifications, B.6: provides "if a value engineering clause is incorporated into any contract, concurrence will be obtained from FAA." Value engineering on its face is intended to make a project more effective and requiring FAA concurrence would add a lengthy amount of time that could either invalidate pricing or cause contractors to increase pricing to accommodate additional delays in starting and finishing a project.

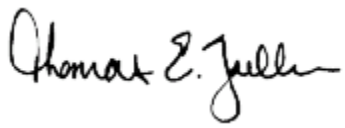
Article II, Certifications, C.3: provides "All procurement will be publicly advertised using the competitive sealed bid method of procurement. If procurement is less than $100,000, project may use three (3) quote method." In today's environment, other acceptable methods of procurement exist including construction manager at risk (CMAR) and design-build, to name but a few, which have been proven to provide economically defensible project costs. Additionally, lowest bid processes do not always yield a quality built project. This item should be changed to allow for other methods.

Article II, Certifications, D.8: provides "all appraisals will be reviewed by a qualified review appraiser to recommend an amount for the offer of just compensation. All written appraisals and review appraisal will be available to FAA for review." We recommend that this item should be indexed to a minimum price in excess of $50,000. It makes little sense to incur the cost of a review appraisal if the purchase price is low and the sponsor is in concurrence with the value.

Article II, Certifications, E.12: provides that "all applicable close-out financial reports will be submitted to FAA within three (3) years of the date of the grant." Some major projects take longer than three years to complete. This item should be modified to include some extender clause, such as "or within 1 year of project completion and close out as determined by the issuance of a certificate of occupancy."

We appreciate the opportunity to offer these comments on behalf of the membership of AAAE. If you have any questions or concerns, you may contact me at (703)824-0504 or by email at tom.zoeller@airportnet.org.

Respectfully submitted,



Thomas E. Zoeller
Vice President
Regulatory Affairs